U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 29 2014 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not met the requisite criteria for classification as an alien extraordinary ability.

On appeal, the petitioner submits a brief. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iv), (v), and (vi). For the reasons discussed below, we find that the petitioner meets the statutory and regulatory requirements for classification as an alien of extraordinary ability.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be

established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the our decision to deny the petition, the court took issue with the our evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect

[1] Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which we did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.

II. Analysis

A. Evidentiary Criteria

The Form I-140, Immigrant Petition for Alien Worker, was filed on April 18, 2013. The petitioner seeks classification as an alien with extraordinary ability as a toxicology researcher. We find that the petitioner's evidence meets the following three categories of evidence under 8 C.F.R. § 204.5(h)(3).

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submitted documentation showing that he served as a peer reviewer of articles for multiple journals such as [redacted]. In addition, as an elected Officer of the [redacted] of the [redacted] the petitioner evaluated more than forty abstracts submitted to the [redacted] for the [redacted] annual meeting. The director, however, determined that the petitioner had not established

eligibility for this criterion. The director stated that the petitioner must demonstrate that his "sustained national or international acclaim resulted in [his] selection to serve as a judge of the work of others in the field." The director's finding for this regulatory criterion went beyond the plain language of the regulations. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1121, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). Accordingly, the petitioner has established that he meets this regulatory criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that the petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). The petitioner submitted letters of support from experts in the field discussing the significance of his original research contributions. The experts' statements do not merely reiterate the regulatory language of this criterion, they describe how the petitioner's scientific contributions are both original and of major significance in the field. Moreover, in support of the experts' statements, the petitioner submitted documentation showing numerous independent cites to his published findings. These citations are solid evidence that the petitioner's work has influenced and is familiar to other researchers. This evidence corroborates the experts' statements that the petitioner has made original contributions of major significance in his field. In addition, the petitioner submitted evidence showing that the media such as [redacted] and [redacted] have reported his findings. The submitted documentation shows that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading toxicology researchers and news media have acknowledged the value of the petitioner's work and its major significance in the field. Accordingly, the petitioner has established that he meets this regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his authorship of scholarly articles in professional journals such as [redacted] The director, however, determined that the petitioner had not established eligibility for this criterion. The director stated: "The mere publication of scholarly articles or research findings does not demonstrate national or international acclaim. In this case, the evidence does not indicate that the your [sic] published articles have garnered national or international attention . . . ." Again, the director's finding for this regulatory criterion went beyond the plain language of the regulations. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth in the regulation. *Love Korean Church,* 549 F.3d at 758. Accordingly, the petitioner has established that he meets this regulatory criterion.

Summary

The petitioner has satisfied the antecedent regulatory requirement of three categories of evidence.

B. Final Merits Determination

We will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-20.

In the present matter, the petitioner has submitted extensive documentation of his achievements in the toxicology field and has demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The submitted evidence, in the aggregate, is sufficient to demonstrate the petitioner's sustained national acclaim as a researcher and that his achievements have been recognized in the field of expertise. In addition, the submitted documentation shows that the petitioner is among that small percentage who have risen to the very top of the field of endeavor. The petitioner peer-reviewed articles for multiple journals and, as an elected Officer of the he evaluated more than forty abstracts for the annual meeting. In addition, the petitioner authored a number of articles that have garnered an unusually large number of citations. *See Kazarian*, 596 F.3d at 1121 (citations may be relevant to the final merits determination of whether an alien is at the very top of his field). Moreover, the petitioner's research findings have been reported by media such as Furthermore, the petitioner submitted reference letters from independent experts in the field, detailing his specific contributions and explaining how those contributions are of major significance in his field. For example, Dr. Professor of Toxicology, comments that the petitioner's "original discoveries have triggered the intense testing of hsp90 inhibitors from natural products in phase II clinical trials around the country." Thus, in light of the evidence discussed herein and other corroborating evidence of record, the petitioner's achievements in the aggregate are commensurate with sustained national acclaim at the very top of his field.

III. Conclusion

In review, the petitioner has submitted evidence qualifying under at least three of the ten categories of evidence and established a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and "sustained national or international acclaim." His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit

prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained and the petition is approved.